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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION  
CORPORATION,

Adv. Proc. No.  
08-01789 (BRL)

Plaintiff,

SIPA LIQUIDATION

v.

(Substantively  
Consolidated)

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

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In Re:

BERNARD L. MADOFF,

Debtor.

-----X

**FED. R. BANKR. P. 8006 STATEMENT OF ISSUES AND DESIGNATION OF  
RECORD ON APPEAL**

On September 27, 2013, Michael Most, a customer of Bernard L. Madoff Investment Securities LLC and a claimant, by and through his attorneys, Stim & Warmuth, P.C., filed a Notice of Appeal (Dkt. No. 5522) from the "Memorandum Decision and Order Granting, to the Extent Set Forth Herein, the Trustee's Motion

for an Order Affirming the Trustee's Calculations of Net Equity and Denying Time-Based Damages" [Dkt. No. 5463] (the "Order") entered by the Bankruptcy Court for the Southern District of New York in the above-referenced adversary proceeding on September 10, 2013. As set forth in the Notice of Appeal, the Appellant seeks to appeal the Order directly to the United States Court of Appeals for the Second Circuit, pursuant to 28 U.S.C. § 158(d)(2). On September 24, 2013, the Bankruptcy Court certified the Order for direct appeal to the Second Circuit. See Court's Certification of Net Equity Adjustment Order of September 10, 2013 for Immediate Appeal to the United States Court of Appeals Pursuant to 28 U.S.C. §158(d)(2) [Dkt. No. 5514]. The Appellant will be filing in the Second Circuit a petition requesting permission to appeal. See Fed. R. Bankr. P. 8001(f)(5); Fed. R. App. P. 5.

In the event that the Second Circuit should deny Appellant's petition for leave to appeal, and to preserve Appellant's right of direct appeal to the District Court, 28 U.S.C. §158(a)(1), the Appellant submits this Statement of Issues to be presented on appeal and Designation of Items to be included in the record on appeal, pursuant to Fed. R. Bankr. P. 8006 and Local Rule 8007-1.

**I. STATEMENT OF ISSUES ON APPEAL**

1. Did the Bankruptcy Court err in ruling, as a matter of law, that the BLMIS customers' claims for "net equity," as defined in SIPA section 78111(11), do not include interest, time value of money, or inflation adjustments such as constant dollar (collectively, "Time-Based Damages").

2. Did the Bankruptcy Court err in failing to give deference to the Securities and Exchange Commission's position that the calculation of "net equity" claims of BLMIS customers should be adjusted for Time-Based Damages.

**II. DESIGNATION OF RECORD ON APPEAL**

**A. Order Appealed From, Transcript of Hearing, and Notice of Appeal<sup>1</sup>**

Filing/Entry Date	ECF No.	Docket Text
09/10/2013	<u>5463</u> (30 pgs)	Written Opinion/Memorandum Decision and Order signed on 9/10/2013 Granting, to the Extent Set Forth Herein, the Trustee's Motion for an Order Affirming the Trustee's Calculations of Net Equity and Denying Time-Based Damages (related document(s) <u>5038</u> , <u>5039</u> ). (Saenz De Viteri, Monica) Modified on 9/10/2013 (Richards, Beverly). (Entered: 09/10/2013)
09/10/2013	<u>5476</u>	Transcript regarding Hearing Held on 09/10/2013 10:03AM RE: Trustees Motion for an Order Affirming Trustees Calculations of Net Equity and Denying Time-Based Damages. Remote electronic access to the transcript is restricted until 12/9/2013. The transcript may be viewed at the Bankruptcy Court Clerks Office.

<sup>1</sup> All documents included in the Appellant's designation have been filed through the Bankruptcy Court's ECF system and pursuant to Local Rule 8007-1(a) have not been re-filed by the Appellant.

		[Transcription Service Agency: Veritext Reporting Company.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 9/17/2013. Statement of Redaction Request Due By 10/1/2013. Redacted Transcript Submission Due By 10/11/2013. Transcript access will be restricted through 12/9/2013. (Ortiz, Carmen) (Entered: 09/17/2013)
9/27/2013	<u>5522</u> (44 pgs; 3 docs)	Notice of Appeal (related document(s) <u>5463</u> ) filed by Paula J. Warmuth on behalf of Michael Most. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B)(Warmuth, Paula) (Entered: 09/27/2013)
09/27/2013		Receipt of Notice of Appeal(08-01789-brl) [appeal,97] ( 298.00) Filing Fee. Receipt number 9676450. Fee amount 298.00. (Re: Doc # <u>5522</u> ) (U.S. Treasury) (Entered: 09/27/2013)
09/30/2013	<u>5524</u> (3 pgs)	Certificate of Service of Notice of Appeal (related document(s) <u>5522</u> ) filed by Paula J. Warmuth on behalf of Michael Most. (Warmuth, Paula) (Entered: 09/30/2013)

**B. Motions, Briefs, and Evidentiary Matter**

08/27/2009	<u>395</u> (19 pgs; 5 docs)	Motion to Authorize / <i>Motion For an Order to Schedule Hearing on "Net Equity" Issue</i> filed by Marc E. Hirschfield on behalf of Irving H Picard Esq.. with hearing to be held on 9/9/2009 at 10:00 AM at Courtroom 623 (BRL) Responses due by 9/3/2009, (Attachments: <u>1</u> Notice of Motion <u>2</u> Exhibit A <u>3</u> Exhibit B <u>4</u> Appendix Certificate of Service) (Hirschfield, Marc) (Entered: 08/27/2009)
12/11/2009	<u>1052</u> (15 pgs)	Memorandum of Law of the Securities and Exchange Commission Supporting Trustee's Determination that Net Equity Should Not be Based on Securities Positions Listed on Last Statements, and Supporting in Part Trustee's Determination that Net Equity Should be Based Upon Amounts Deposited Less Amounts Withdrawn (related document(s) <u>524</u> ) filed by Patricia Schrage on behalf of Securities and Exchange Commission. (Schrage, Patricia) (Entered: 12/11/2009)

10/12/2012	<u>5036</u> (41 pgs)	Memorandum of Law of the Securities Investor Protection Corporation in Support of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages filed by Josephine Wang on behalf of Securities Investor Protection Corporation. (Wang, Josephine) (Entered: 10/12/2012)
10/12/2012	<u>5038</u> (16 pgs; 3 docs)	Motion to Approve / Notice of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages (related document(s) <u>5022</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 1/10/2013 at 10:00 AM at Courtroom 623 (BRL) Responses due by 11/12/2012, (Attachments: # <u>1</u> Exhibit A to Notice of Trustee's Motion# <u>2</u> Trustees Motion for an Order Affirming Trustees Calculations of Net Equity and Denying Time-Based Damages) (Sheehan, David) (Entered: 10/12/2012)
10/12/2012	<u>5039</u> (39 pgs)	Memorandum of Law / Memorandum of Law in Support of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages (related document(s) <u>5038</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. Objections due by 11/12/2012, (Sheehan, David) (Entered: 10/12/2012)
10/12/2012	<u>5040</u> (79 pgs; 3 docs)	Declaration / Declaration of Bik Cheema in Support of The Trustee's Motion for an Order Affirming The Trustee's Calculation of Net Equity and Denying Time-Based Damages (related document(s) <u>5038</u> , <u>5039</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 1/10/2013 at 10:00 AM at Courtroom 623 (BRL) Objections due by 11/12/2012, (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B) (Sheehan, David) (Entered: 10/12/2012)
10/12/2012	<u>5041</u> (5 pgs)	Declaration / Declaration of Robert J. Rock in Connection with The Trustee's Motion for an Order Affirming The Trustee's Calculation of Net Equity and Denying Time-Based Damages (related document(s) <u>5038</u> , <u>5039</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 1/10/2013 at 10:00 AM at Courtroom 623 (BRL) Objections due by 11/12/2012, (Sheehan, David)

		(Entered: 10/12/2012)
10/25/2012	<u>5056</u> (2 pgs)	Notice of Appearance filed by Paula J. Warmuth on behalf of Michael Most. (Warmuth, Paula) (Entered: 10/25/2012)
10/25/2012	<u>5057</u> (3 pgs)	Consent Motion to Substitute Attorney filed by Paula J. Warmuth on behalf of Michael Most. (Warmuth, Paula) (Entered: 10/25/2012)
12/03/2012	<u>5120</u> (25 pgs; 4 docs)	Memorandum of Law <i>In Opposition</i> (related document(s) <u>5038</u> ) filed by Paula J. Warmuth on behalf of Michael Most. (Attachments: # <u>1</u> Exhibit A - Part One# <u>2</u> Exhibit A - Part Two# <u>3</u> Exhibit A - Part Three) (Warmuth, Paula) (Entered: 12/03/2012)
12/03/2012	<u>5121</u> (3 pgs)	Certificate of Service (related document(s) <u>5120</u> ) filed by Paula J. Warmuth on behalf of Michael Most. (Warmuth, Paula) (Entered: 12/03/2012)
12/10/2012	<u>5142</u> (19 pgs)	Memorandum of Law <i>of Securities and Exchange Commission Supporting a Constant Dollar Approach to Valuing Customers' Net Equity Claims for Fictitious Securities Positions</i> ( <b>Related Document #<u>5038</u></b> ) filed by Patricia Schrage on behalf of Securities and Exchange Commission. (Schrage, Patricia) ( <b>Modified on 12/11/2012 to Add Link Related Document</b> ) (Richards, Beverly). (Entered: 12/10/2012)
01/23/2013	<u>5212</u> (5 pgs)	Amended Time-Based Damages Scheduling Order signed on 1/23/2013 (related document(s) <u>5022</u> ). (Saenz De Viteri, Monica) (Entered: 01/23/2013)
04/26/2013	<u>5352</u> (28 pgs)	Transcript regarding Hearing Held on 04/25/2013 10:04AM RE: Trustees Motion For An Order Affirming Trustees Calculations Of Net Equity And Denying Time Based Damages..et al... Remote electronic access to the transcript is restricted until 7/25/2013. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Veritext Reporting Company.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 5/3/2013. Statement of Redaction Request Due By 5/17/2013. Redacted Transcript Submission Due By

		5/28/2013. Transcript access will be restricted through 7/25/2013. (Ortiz, Carmen) (Entered: 05/01/2013)
07/18/2013	<u>5413</u> (41 pgs)	Reply to Motion <i>Reply Memorandum of Law of the Securities Investor Protection Corporation in Support of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Deyning Time-Based Damages</i> (related document(s) <u>5038</u> ) filed by Josephine Wang on behalf of Securities Investor Protection Corporation. (Wang, Josephine) (Entered: 07/18/2013)
07/18/2013	<u>5415</u> (29 pgs)	Reply to Motion / <i>Reply Memorandum of Law in Support of Trustees Motion for an Order Affirming Trustees Calculations of Net Equity and Denying Time-Based Damages</i> (related document(s) <u>5038</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 07/18/2013)
07/18/2013	<u>5416</u> (3 pgs)	<i>Declaration of Vineet Sehgal in Support of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages</i> (related document(s) <u>5415</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 07/18/2013)

**C. Additional Material Designated by Appellant**

02/08/2010	<u>1873</u> (18 pgs; 3 docs)	Objection <i>Objection to Trustee's Determination of Claim</i> filed by Helen Chaitman on behalf of Michael Most. (Attachments: <u>1</u> Exhibit Exhibit A <u>2</u> Certificate of Service) (Chaitman, Helen) (Entered: 02/08/2010)
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Dated: Farmingville, NY  
October 11, 2013

Respectfully submitted,

STIM & WARMUTH, P.C.

By: /s/

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